Open Access … And Then?

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In 2021, the *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (also known as the Heidelberg Journal of International Law) was reborn. Though one of the oldest public and international law journals, its editors have taken the decision to embrace a new era and mode of publishing. The ZaöRV is now a Platinum Open-Access journal. At the same time, they took the decision to begin an outreach campaign on Twitter, Linkedin and other fora. As members of the journal's advisory board and of the social media team, we have had the opportunity to play a small part in that transition, and have gladly accepted the invitation of the Verfassungsblog to contribute to this symposium on 'Gatekeepers and Gatekeeping in Open Access and Academic Publishing' with some personal reflections on the benefits of the open access revolution, as well as what remains left to do. Importantly, our views by no means necessarily reflect those of the entire ZaöRV. However, we take this opportunity to share our thoughts, in the light of the experience we have acquired in the past few months.

The Problems with Traditional Publishing

The ZaöRV published its first issue in 1929, just a decade after the First World War and at a time of political change in Europe and the World. In the nine decades since, a rich and multifaceted academic publication system has grown, with both generalist and specialist journals catering to a vast range of legal audiences. There can be no doubt that the growth in legal journal publishing has made substantial contributions to the development of the legal state of the art. Yet simultaneously, and despite contrary intentions or the better judgment of the individuals involved, the structures of that academic publishing system too often have the effect of excluding large numbers of scholars, entrenching existing inequalities, and restricting the social penetration and relevance of the product of academic enquiry.

The shortcomings of traditional academic publishing have been highlighted many times before, and some are discussed again in this symposium. Traditional publishing models commercialise the product of academic investigation. At one end of the process, journal content is made available either through subscription fees or via paywalls. At the other end of the process, researchers wishing to publish in journals are often required to transfer (some of) intellectual property rights to their papers to the journal concerned. Those researchers in the happy position of being able to publish "gold" open access—that is, that the author of the article pays a fee to make the article freely available to readers—reap the rewards of increased readership and citations that come with it. But to do so they must pay

article processing fees which are often far beyond the resources of less privileged institutions or individual scholars.

Open Access as a Partial Solution

As this symposium acknowledges, open access is not without its blind spots and dark sides. Nevertheless, it can offer at least a partial solution to the problems of traditional publishing models. By making materials available without subscriptions or paywalls, it significantly reduces the accessibility gap which prevents many institutions in the global south – and, indeed, some in the global north too – from accessing academic research on terms of equality with their more privileged colleagues at financially richer institutions.

Yet open access through the so-called "gold" route can entrench inequality further at the other end of the process. If publishing open access is made dependent on article processing charges, only those fortunate enough to be working at rich institutions can avail themselves of it. Scholars at less wealthy institutions which can't afford to pay such high per-article fees may benefit from greater access to scholarship but are relegated to being passive consumers of open access scholarship rather than full partners in the academic process. The academic world would be severely impoverished as a result.

Though doubtless, and perhaps preponderantly, positive in terms of access, attention must be paid to these unintended consequences of open access models. And yet, these are not the only "dark" dynamics triggered or even reinforced by the open access expansion, which may affect different scholarly communities to markedly different extents, especially when it comes to new forms of value-extraction implemented by the main players of academic publishing capitalism.

Hiding the value extraction – again?

One concern is the redistribution of the economic value extracted from researchers' work. The shift from philanthropic sponsorship of the publication of scholarly works by patron individuals or societies to a commercialised model in the late 19th and early 20th centuries doubtless brought many advantages, not least a (partial) democratisation of knowledge production. Yet with commercialisation came market imperatives: research became a product to be obtained as cheaply as possible, so that it could be sold with a sufficient margin to generate a profit for the publishing houses. It's largely as a result of this pressure that the system has come to rely so heavily on a distinction between the cost of knowledge production – borne by universities and research centres in the form of researchers' salaries and the cost of maintaining libraries – and the cost of the knowledge product, obtained by journals without payment of fees to authors. Indeed, it's standard practice for researchers to sign over some or all of their intellectual property rights in their works to journal publishers on acceptance, either in the form of transference of copyright or lifetime license to publish, without financial compensation. Similarly,

the system has come to depend entirely on the often unpaid – or unpaid by the publishers – work of academics to sustain itself, in the form of indispensable work by journal, issue, and series editors, and peer reviewers. Certainly, it should not be understood that academics gain nothing thereby: publication in a journal is a milestone in the careers of many young researchers, and the opportunity to have one's work read, debated and built-upon by peers, decision-makers and others is one of the most thrilling aspects of academia. And yet too often "publish or perish" dynamics mean that the content which appears in this for-profit system is the result of researchers' (over)work at night, during weekends, on "holidays", on supposed-to-be parental leaves; with increasingly significant physical and mental health impacts. Though not the cause, the shift to open access risks hiding, reinforcing, or even romanticising the regrettable fact that a good part of the academic workforce is pushed by market conditions to work for free.

Underlining this element is even more important given the capacity of business actors in academic publishing to keep extracting value in an open access context, for example by turning to information analysis and business models based on data collection. We could learn from the experience of the music industry, where open access' promise of greater inclusion and diversification for both consumers and artists, ultimately favoured new private actors of the digital economy and their unilateral power over artists' works. From this perspective, one of the main challenges in the ongoing shift in academic publishing should be the introduction of forms of dissemination that, while preserving open access for readers, do not overlook the economic injustices of current academic markets. All publications and fora – old and new – and the institutions behind them are called to be part of the solution.

Open access: Strengthening the position of hegemonic players?

Another, potentially overlooked, "dark" side of open access concerns the hegemonic position of a handful of academic publications, the (in)famous "top" journals and publishers. Open access and digital technology increase both the quantity and the speed of information available, and this trend seems set to continue. But there is only so much that a reader can process. Paradoxically, this abundance might increase the need for collectively shared points of reference in the selection and use of sources, which could, in turn, reinforce the position of the so-called top journals, i.e., those rightly or wrongly recognised as the ultimate arbiters of academic quality. In international legal academia, the welcome rise of blogs and open access fora in the last 10 years has been paralleled by the ever-increasing centrality of a dozen, mostly Anglophone journals, in turn linked to 3-4 major publishing houses. These dominate at all levels of the academic system: from hiring processes to career progression, from grant allocations to research institutions' rankings, up to micro-level interpersonal relations.

Here again, the Janus-faced impact of open access on marginalised and global south scholars is palpable: on the one hand, a greater opportunity for their research

to be read on terms of equality with those in the academic centre; or the other hand, whether such voices are heard is controlled by a few Western-centric actors, maybe to an even greater extent than in the past. The open access shift, then, should be accompanied by several structural changes, without which it risks perpetuating or amplifying certain negative features of the current academic system. Different actors need to revisit their hiring, promotion, and ranking processes; the boards of generalist journals need to be further diversified, both in terms of geography and language; and open access publications should take ever more seriously their role as gatekeepers, to ensure that accessibility does not come at the cost of homogeneity.

The needed change

Clearly: open access alone does not solve all problems of academic publishing. The journal publishing system should aim to be ever more diverse, inclusive, and accessible for everyone. Yet, as most journal editors know, between good intentions and the realisation of our goals, there is a gap, and one not easy to bridge. The lack of diversity among published authors and topics is a problem affecting the whole system of academia, and a great deal of lived experience exists in our communities. As the ZaöRV social media team, we have tried to draw on sources of experience and knowledge available to us: we reached out to our Twitter audience to ask their advice on how the journal can become more welcoming for early career scholars and academics who have historically been overlooked, including scholars from the global south, female and LGBTQI+ scholars.

As a response to one of our tweets, we received some wonderful suggestions which offer ways to mitigate the inequalities inherent to academic publishing. We are very grateful to all those who came forward either in public or in private messages and hope that they do not mind if we share their ideas with this wider audience as well.

The first and the most mentioned suggestion was to diversify the review process. Inviting academics from the global south to review demonstrates respect for their scholarly experience and opinions, just as reference always to “the usual crowd” demonstrates a lack of openness to new voices. That manifestation of respect may empower more submissions from the peripheral regions. Along similar lines, a journal can specifically request submissions from underrepresented regions and backgrounds. There are multiple options for that, from reaching out to scholars individually, to initiating a special issue on topics where the expertise of peripheral scholars is vital, or including academics from different backgrounds in events. It is perhaps most important, though, that a journal simply be – and be seen to be – open and supportive.

In particular of value for early career researchers, journals can consider holding regular webinars where board members explain how the journal publication system works, as many young scholars are thrown into the ocean of scholarly production without knowing clearly what is expected from them when producing scholarly work. Some journals already offer assistance in research and brainstorming with board

members, and this is a format that can be extremely helpful in taking the difficult first steps into the publishing world. Even beyond the point of submission, the long timescales involved in the review and publication process can be challenging for those at the start of a research career, both in terms of personal impacts and in their career planning. Journals also have to be mindful of this important caveat and, where possible, strive to reduce the timescales in making decisions on publication and to communicate those decisions in sensitive and constructive ways. It is vital in this regard that editors set and enforce standards for reviewers. Following a publication decision, the facility to give “early view” access to articles increases the utility for the careers of early career scholars and makes topical scholarship more attractive.

The peer review system – where it works well and where appropriate standards are enforced – can be positive, supportive, and result in vastly improved publications. And yet even under such circumstances, an encounter with Reviewer #2 can be daunting, especially for early career researchers. Academia should be a pleasant place to work for everyone and an environment of support and exchange, even – perhaps particularly – within the peer review process. In order to tame the license some reviewers seem to find in anonymity, some have even suggested removing anonymity from peer reviewers altogether, but we received another excellent suggestion to the same end; that is, to facilitate a dialogue between a reviewer and an author once the review process is over, on a voluntary and opt-in basis. Whether or not the process results in publication, a willingness to discuss the piece once reviewers have delivered their feedback could facilitate a dialogue between scholars interested in similar issues that has the potential to enrich them both and which, most importantly, has the effect of minimising “hatred” or hard-feelings towards reviewers, who do the job for free.

At the moment these are ideas and aspirations, but in the coming weeks and months we will be suggesting these to the other members of our advisory board, and we invite other advisory boards across the sector to join us in reviewing – and trying to improve – their accessibility policies. There is a great deal of variation between publications as to whether they take these and other steps to make themselves welcoming to early career researchers and marginalised scholars, but at whatever point on the continuum a publication currently finds itself, all of us as individuals engaged in the system can commit ourselves to making things better.

Final Remarks

Journals in all fields are increasingly making the move to fully open access publication, with content made available to scholars without paywalls or article processing charges for authors. We both believe and hope that this publication model offers a means significantly to improve access for readers and to empower scholars; to make the publication process truly merit driven. Yet there remain other, and often more resistant, barriers to participation in the publication process, restricting women, younger scholars, global south scholars, and others from equal access to scholarship and the tools of publication. The effect of those barriers is that

some of those most closely connected to the problems of the world are prevented from participation. No system of knowledge production can or should survive such a self-inflicted wound. The problems are various and the solutions often elusive, but these are problems that *must* be solved, both as a matter of solidarity and fairness across the academic world, and to realise the potential of the academic system as a whole.
